

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**February 26, 2001**

At 9:31 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Callahan, Acting Presiding Justice; Hull, Associate Justice; Kolkey, Associate Justice; and Castillo, Bailiff. Calendar Called.

**C034972      WILMSHURST v. WILMSHURST**

Cause called. Richard E. Wilmshurst, appellant, argued In Pro Per. Scott Ward argued for respondent. Cause submitted.

At 9:57 a.m., the court recessed. At 10:01 a.m., the court reconvened with Acting Presiding Justice Nicholson, Associate Justice Callahan and Associate Justice Hull.

**C030938      THE PEOPLE v. BOWERS**

Cause called. Susan D. Shors, court appointed counsel, argued for appellant. Rachelle A. Newcomb, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:41 a.m., the court recessed. At 10:47 a.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Davis and Associate Justice Hull.

**C033915      SUTTER MERCED MEDICAL CENTER v.  
DEPARTMENT OF HEALTH SERVICES**

Cause called. John P. Wagner argued for appellant. Paul Reynaga argued for respondent. Cause submitted.

At 11:27 a.m., the court recessed. At 11:30 a.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Sims and Associate Justice Nicholson.

**C033233      THE PEOPLE v. HILL  
C033310      THE PEOPLE v. HILL**

Cause called. Janice Lagerlof, court appointed counsel, argued for appellant. Matthew L. Cate, Deputy Attorney General, argued for respondent. Cause submitted.

At 12:03 p.m., the court recessed until 9:30 a.m., Tuesday, February 27, 2001.

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**The Minutes**

**February 26, 2001, continued**

- C036170      THE PEOPLE v. ROBERTSON      (Not for Publication)**  
The judgement is modified to impose a penalty assessment of \$250 PURSUANT TO Penal Code section 1464 and a penalty assessment of \$175 pursuant to Government Code section 76000. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the modification and showing that defendant was awarded 368 days of good conduct credit for his local confinement. The trial court is further directed to send a certified copy of the amended abstract of judgment to the Department of Corrections.  
SCOTLAND, P.J.  
We concur:    Raye, J.  
                 Callahan, J.
- C036281      THE PEOPLE v. FACKRELL      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur:    Scotland, P.J.  
                 Callahan, J.

**February 27, 2001**

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Scotland, Presiding Justice; Blease, Associate Justice; Kolkey, Associate Justice; and Conrad, Bailiff.  
Calendar Called.

- C035047      DUBE v. DEPARTMENT OF REAL ESTATE**  
Cause called. James L. Brunello argued for appellant. John D. Schell, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:10 a.m., the court recessed. At 10:11 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Kolkey.

- C029743      THE PEOPLE v. HARRIS**  
Cause called. Leo James Terrell argued for appellant. Doris A. Calandra, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:43 a.m., the court recessed. At 10:46 a.m., the court reconvened with Presiding Justice Scotland, Associate Justice Nicholson and Associate Justice Raye.

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**The Minutes**

**February 27, 2001, continued**

**C034579      NASS WYATT v. WYATT et al.,**  
Cause called. Maxim N. Bach argued for appellant. Marian M. Johnston  
argued for respondent. Cause submitted.

At 11:28 a.m., the court recessed until 9:30 a.m., Monday,  
March 19, 2001

**C027546      THE PEOPLE v. ANGEL      (Not for Publication)**  
The judgment is affirmed.  
   NICHOLSON, Acting P.J.  
I concur:                      Morrison, J.  
I join in parts II through VII of the majority opinion. I respectfully dissent  
as to part I because I disagree with the majority's analysis of defendant's  
claim of ineffective assistance of counsel...I would remand the matter to  
the trial court for further proceedings.  
   Hull, J.

**C029045      THE PEOPLE v. HOUSTON      (Not for Publication)**  
The abstract of judgment incorrectly records an enhancement on count  
23 in case No. 93F03992 (two cases were consolidated for sentencing.)  
No such enhancement was charged or found to be true. Accordingly, the  
trial court is directed to send a corrected abstract of judgment to the  
Department of Corrections deleting this erroneous entry. The total term  
imposed of 322 years is not affected by this correction. The judgment of  
the trial court is affirmed.  
   DAVIS, J.  
We concur:                  Scotland, P.J.  
   Hull, J.

**C030473      THE PEOPLE v. SNELLING      (Not for Publication)**  
The judgment is affirmed.  
   SCOTLAND, P.J.  
We concur:                  Davis, J.  
   Hull, J.

**C032884      THE PEOPLE v. WRIGHT      (Not for Publication)**  
The judgment is affirmed.  
   MORRISON, J.  
We concur:                  Davis, Acting P.J.  
   Callahan, J.

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**The Minutes**

**February 27, 2001, continued**

- C033157      THE PEOPLE v. HAMPSON      (Not for Publication)**  
The judgment is affirmed.  
   DAVIS, J.  
We concur:      Sims, Acting P.J.  
   Morrison, J.
- C033513      THE PEOPLE v. STRONG      (Not for Publication)**  
The order striking the finding of defendant's 1996 conviction for assault with a deadly weapon is reversed. The matter is remanded with directions to reinstate that finding and to resentence defendant as a person who has suffered a prior serious felony conviction. We also note that the trial court failed to impose the mandatory parole revocation fine under section 1202.45 at the original sentencing hearing, which should be ordered at resentencing. (See *People v. Smith* (2001) 24 Cal.4<sup>th</sup> 849.) In all other respects, the judgment is affirmed.  
   KOLKEY, J.  
I concur:      Morrison, J.  
I concur in the result:  
   Blease, Acting P.J.
- C034275      THE PEOPLE v. GLASER      (Not for Publication)**  
The judgment of conviction is affirmed.  
   BLEASE, J.  
We concur:      Scotland, P.J.  
   Sims, J.
- C034752      THE PEOPLE v. CARLOS      (Not for Publication)**  
The judgment is affirmed.  
   MORRISON, J.  
We concur:      Davis, Acting P.J.  
   Nicholson, J.
- C034837      THE PEOPLE v. SEGUINE      (Not for Publication)**  
The judgment is modified to reflect imposition of a \$50 criminal laboratory analysis fee and related penalty assessments of \$85. The trial court is directed to amend the abstract of judgment accordingly. The trial court is further directed to correct the abstract to show that defendant entered a plea of guilty and was sentenced on counts 2 and 3 of the information and to forward a certified copy of the abstract as amended and corrected to the Department of Corrections. As modified, the judgment is affirmed.  
   MORRISON, J.  
We concur:      Davis, Acting P.J.  
   Callahan, J.

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**The Minutes**

**February 27, 2001, continued**

- C035444      THE PEOPLE v. MARTIN, SR.      (Not for Publication)**  
The case is remanded to the trial court for a hearing as described in this opinion. If the court finds that the statute of limitations had run, and defendant does not elect to waive the statute of limitations (*Cowan v. Superior Court* (1996) 14 Cal.4<sup>th</sup> 367, 372-374), the court is instructed to vacate the judgment. If the trial court finds that the statute of limitations had not yet run, the judgment of conviction shall stand.  
MORRISON, J.  
We concur:    Nicholson, Acting P.J.  
                 Callahan, J.
- C036221      THE PEOPLE v. SAGARAGA      (Not for Publication)**  
The judgment is modified to provide for the following: 74 total presentence credits (65 actual plus 9 conduct credits) are awarded in Case No. SF079262A; 8 total presentence credits (7 actual plus 1 conduct credits) are awarded in Case No. SF079207A; and a \$220 parole revocation fine is ordered under section 1202.45, to be suspended unless parole is revoked. The judgment is affirmed in all other respects. The trial court is directed to prepare an amended abstract of judgment reflecting the foregoing modifications, and correcting the amount of the restitution fine (§ 1202.4, subd. (b)) in the abstract to \$220. The trial court shall send a certified copy of the amended abstract of judgment to the Department of Corrections.  
KOLKEY, J.  
We concur:    Nicholson, Acting P.J.  
                 Morrison, J.
- C032337      SKAGS v. KAPPOS      (Not for Publication)**  
The judgment is reversed to the extent the pleadings seek relief for damages other than to the plaintiff's real property. As to the latter, the judgment is affirmed. The plaintiff shall recover costs of appeal.  
DAVIS, Acting P.J.  
We concur:    Morrison, J.  
                 Kolkey, J.
- C033836      GOLDEN EAGLE INSURANCE COMPANY v. BERGER et al.,      (Not for Publication)**  
The judgment is affirmed. Berger and Anderson shall recover costs on appeal.  
RAYE, Acting P.J.  
We concur:    Morrison, J.  
                 Kolkey, J.

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**The Minutes**

**February 27, 2001, continued**

- C033981      KAHL v. RING      (Not for Publication)**  
The judgment is affirmed.  
                         MORRISON, J.  
We concur:    Davis, Acting P.J.  
                         Nicholson, J.
- C034515      DRYER v. BECKER      (Not for Publication)**  
The judgment (order) is affirmed.  
                         MORRISON, J.  
We concur:    Davis, Acting P.J.  
                         Nicholson, J.
- C036196      MCDONALD v. MCDONALD      (Not for Publication)**  
The judgment (order) is affirmed.  
                         BLEASE, Acting P.J.  
We concur:    Morrison, J.  
                         Hull, J.
- C035843      In re KIMBERLY T. et al., YUBA COUNTY DEPARTMENT OF SOCIAL  
SERVICES v. DIXIE T.      (Not for Publication)**  
The judgment is affirmed.  
                         KOLKEY, J.  
We concur:    Nicholson, Acting P.J.  
                         Morrison, J.
- C035863      In re DAVID H. et al., DEPARTMENT OF HEALTH & HUMAN  
SERVICES v. NANCY H.      (Not for Publication)**  
The orders of the juvenile court are affirmed.  
                         MORRISON, J.  
We concur:    Blease, Acting P.J.  
                         Davis, J.
- C035915      In re WILLIMINA H. et al., SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES v. CAROLYN H.      (Not for Publication)**  
The orders are affirmed.  
                         KOLKEY, J.  
We concur:    Nicholson, Acting P.J.  
                         Morrison, J.

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**The Minutes**

**February 28, 2001**

- C032087      THE PEOPLE v. THERRIAN      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:      Kolkey, J.  
I concur in the result:  
                                 Blease, Acting P.J.
- C032577      THE PEOPLE v. JAMES      (Not for Publication)**  
The portion of the restitution order granting a total of \$6,000 to Coop's children who were not present at the time of the offense is stricken. The trial court is directed to prepare and forward to the Department of Corrections a new abstract of judgment. In all other respects the judgment is affirmed.  
                                 MORRISON, J.  
We concur:      Sims, Acting P.J.  
                                 Davis, J.
- C033811      THE PEOPLE v. GARRETT      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:      Raye, Acting P.J.  
                                 Callahan, J.
- C035405      THE PEOPLE v. PINA      (Not for Publication)**  
The judgment is affirmed.  
                                 SCOTLAND, P.J.  
We concur:      Raye, J.  
                                 Callahan, J.
- C035875      THE PEOPLE v. BAUTISTA      (Not for Publication)**  
The order extending defendant's commitment to the Department of Mental Health effective July 6, 2000, is affirmed.  
                                 SCOTLAND, P.J.  
We concur:      Davis, J.  
                                 Callahan, J.
- C034889      MARCUCCI et al., v. BOREAL RIDGE CORPORATION      (Not for Publication)**  
The judgment is affirmed. Boreal shall recover costs on appeal.  
                                 RAYE, Acting P.J.  
We concur:      Morrison, J.  
                                 Kolkey, J.





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**The Minutes**

**March 1, 2001, continued**

**C032143      THE PEOPLE v. BURGESS      (Certified for Partial Publication)**  
The stayed sentence in count two is modified to 15 years to life, and the judgment is affirmed as modified. The court is directed to amend the abstract of judgment, and forward the amended abstract to the Department of Corrections. **(CERTIFIED FOR PARTIAL PUBLICATION)**  
CALLAHAN, J.  
We concur:    Nicholson, Acting P.J.  
                 Hull, J.

**C035723      THE PEOPLE v. GARCIA      (Not for Publication)**  
The trial court is directed to prepare a corrected abstract of judgment listing the date of the hearing as April 3, 2000, and awarding defendant a additional day for the time he spent in custody. A copy of the corrected abstract of judgment shall be sent to the Department of Corrections. In all other respects, the judgment is affirmed.  
DAVIS, J.  
We concur:    Scotland, P.J.  
                 Callahan, J.

**March 2, 2001**

**C032451      THE PEOPLE v. SIMPSON      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, Acting P.J.  
We concur:    Callahan, J.  
                 Hull, J.

**C032926      THE PEOPLE v. JACKSON      (Not for Publication)**  
Our review of the record reveals that the court miscalculated the number of days defendant actually spent in county jail. He is entitled to an extra day, but no change in conduct credit. The trial court is directed to prepare a corrected abstract of judgment with an award of 243 days of custody credit and to send a copy of it to the Department of Corrections. Other than our correction of the credit calculation, the judgment is affirmed.  
DAVIS, J.  
We concur:    Scotland, P.J.  
                 Nicholson, J.

**C033232      THE PEOPLE v. BREEZLEY      (Not for Publication)**  
The judgment is affirmed.  
CALLAHAN, J.  
We concur:    Sims, Acting P.J.  
                 Kolkey, J.

**COURT OF APPEAL  
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**The Minutes**

**March 2, 2001, continued**

- C033233**      **THE PEOPLE v. HILL**      **(Not for Publication)**  
**C033310**      The judgment is reversed and the matter remanded for retrial on the  
registration count (if the prosecution seeks retrial) and redetermination of  
the probation revocation.  
                 SIMS, J.  
We concur:    Blease, Acting P.J.  
                 Nicholson, J.
- C035089**      **THE PEOPLE v. DONAHUE**      **(Not for Publication)**  
The judgment is modified to provide a state penalty assessment in the  
amount of \$20 (§ 1464) and a county penalty assessment in the amount  
of \$14 (Gov. Code, § 76000) on the \$20 crime prevention fine (§ 1202.5).  
The trial court is directed to prepare an amended abstract of judgment  
reflecting this fine and assessments as well as the \$200 parole fine, the  
\$161 booking fee and the \$33 classification fee, and to correct the  
offense to first degree robbery, and to forward a certified copy to the  
Department of Corrections. As modified, the judgment is affirmed.  
                 MORRISON, J.  
We concur:    Nicholson, Acting P.J.  
                 Callahan, J.
- C035251**      **THE PEOPLE v. CLINGAN**      **(Not for Publication)**  
The judgment (order granting probation) is affirmed.  
                 MORRISON, J.  
We concur:    Davis, Acting P.J.  
                 Nicholson, J.
- C035695**      **THE PEOPLE v. PUGA**      **(Not for Publication)**  
The trial court is directed to prepare an amended abstract of judgment  
correctly labeling the underlying offense and including the order for victim  
restitution which is to be determined and to forward a certified copy to the  
Department of Corrections. The judgment is affirmed.  
                 MORRISON, J.  
We concur:    Davis, Acting P.J.  
                 Nicholson, J.
- C036317**      **THE PEOPLE v. GRANT**      **(Not for Publication)**  
The judgment is affirmed.  
                 CALLAHAN, J.  
We concur:    Scotland, P.J.  
                 Raye, J.

**COURT OF APPEAL  
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**The Minutes**

**March 2, 2001, continued**

- C029714      PICHLY et al., v. NORTECH WASTE LLC et al.,**  
**(Certified for Publication)**  
The order denying Nortech's petition to compel arbitration is reversed and the matter is remanded for entry of a new order compelling arbitration. Nortech shall recover its costs on appeal. (CERTIFIED FOR PUBLICATION)  
NICHOLSON, J.  
We concur: Davis, Acting P.J.  
Kolkey, J.
- C035181      LOPEZ et al., v. WILCOXEN, MONTGOMERY & HARBISON et al.,**  
**(Not for Publication)**  
The judgment is reversed. Lopez and Solorio shall recover their costs on appeal.  
SIMS, Acting P.J.  
We concur: Nicholson, J.  
Kolkey, J.
- C035782      SPARKS et al., v. CITY OF WHEATLAND et al.,**  
**(Not for Publication)**  
The judgment is affirmed.  
CALLAHAN, J.  
We concur: Davis, J.  
Nicholson, J.
- C036645      In re JOEL F., SACRAMENTO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES v. WENDI S.**  
**(Not for Publication)**  
The order is affirmed.  
DAVIS, J.  
We concur: Scotland, P.J.  
Callahan, J.